

CONTRACT FOR SPECIAL SERVICES BY INDEPENDENT CONTRACTOR

THIS CONTRACT is entered into this ____ day of _____, 2014, by and between the COUNTY OF SAN LUIS OBISPO, a public entity in the State of California, (hereinafter referred to as "County"), and GOLDEN STATE GOLF COMPANY, an independent Contractor (hereinafter referred to as "Contractor").

W I T N E S S E T H

WHEREAS, County, as operator of the Morro Bay State Park Golf Course for the State of California ("State"), pursuant to an Operating Agreement entered into on the 24th day of January, 2000, and pursuant to Public Resources Code Section 5080.30 et. Seq., may grant concession agreements for the rendering of public services at said golf course in accordance with the standards contained in said Operating Agreement; and

WHEREAS, the concession Contract was authorized by the California Legislature through the Supplemental Report of the FY 2013-14 Budget Act; and

WHEREAS, it is appropriate that the following Contract be entered into for the benefit of the general public and the use of and enjoyment of the County Park System; and

WHEREAS, Contractor is specially trained, experienced, expert and competent to perform golf management and operations;

NOW THEREFORE, the parties mutually agree as follows:

1. **Description of Premises.** The purpose of this Contract is to obtain the services of a pro shop and food and beverage operator for Morro Bay State Park Golf Course. The license to enter and use the underlying real property and any improvements that are real property are incidental to and flow from the status necessary to provide services and operate a pro shop and restaurant on public property. The use of the real property, improvements and fixtures does not grant Contractor any incidents of ownership or easement. No interest in land or fixtures is granted.

The County, for and in consideration of the promises hereinafter made, grants to Contractor the right and privilege to maintain and operate a pro shop and food and beverage concession at the Morro Bay State Park Golf Course. A vicinity map is provided on Exhibit "A" and the concession Premises is designated on Exhibit "B" both attached hereto and incorporated by this reference.

No rights, other than those expressly given in this Contract, are granted, and any other implied rights are hereby denied Contractor under this Contract.

2. **Condition of Premises.** The taking of possession of the subject Premises by Contractor shall, in and of itself, constitute acknowledgment that the Premises are in good and tenable

condition. Contractor agrees said Premises are in their presently existing condition, suitable to this Contract, "as is"; and the County shall not be obligated to make any alteration, additions or betterment thereto.

3. **Scope of Services.** Pursuant to this Contract, Contractor shall provide to the County the following golf management and operation services:

- A. Contractor shall act on behalf of, and as agent for, the County in the collection of One Hundred Percent (100%) of greens fees (including discount passes), revenue from sales of all golf registration cards, private golf cart registration, private golf cart trail fees, and golf course development surcharge fees, hereinafter referred to as "County Revenue." The County establishes all County Revenue rates and charges. Contractor shall act in a fiduciary capacity and make no personal or organizational use of funds collected.
- B. Hereinafter, "Contractor Revenue" shall be defined as the sum of (1) One Hundred Percent (100%) of golf car rental revenue, (2) One Hundred Percent (100%) of driving range operations revenue, (3) One Hundred Percent (100%) of Pro Shop revenue including merchandise sales, golf club rentals, electric and manual handcart rentals, golf lessons, transaction/reservation charges, and any other income derived from Pro Shop Operations, and (4) One Hundred Percent (100%) of restaurant and bar sales. All Contractor Revenue rates and changes must be approved by the Director or designee.
- C. The terms "County Revenue" and "Contractor Revenue" whenever used in this Contract, are intended and shall mean all monies, property or any other value received by Contractor through the operation of said Contract, without any deduction or deductions; it being understood, however, that the terms "County Revenue" and "Contractor Revenue" shall not include any sales or excise taxes imposed by any governmental entity.
- D. Contractor shall notify, in writing, the County of all non-golf related events occurring at the Premises. Distribution of revenue derived from non-golf related events will be determined by the County [and Contractor] on a case-by-case basis throughout the term of this Contract.
- E. Each month Contractor shall collect all revenue paid via cash and/or check payment methods and the County shall collect all revenue paid with credit and/or debit cards. County Revenue and Contractor Revenue shall remain as previously described in subparagraphs A and B within this paragraph. On or before the 15th of each month,

Contractor is required to audit all tee sheet data to ensure 100% compliance with established fee schedules and promotional offerings, forward the pro shop Point of Sale cash register tapes, daily bank deposit receipts and/or information, and detailed accounting of all profit centers to County for the prior month receipts. County and Contractor shall then reconcile the revenues from the prior month end according to subparagraph A and B.

- F.** On or before January 15th, Contractor shall prepare and submit to County a statement showing the total gross receipts, operating costs, and net profit for the prior twelve (12) month period and the rental paid for said twelve (12) months. This statement shall be audited by a third party CPA prior to submission. For purposes of this Contract, the term “gross receipts” is defined as all receipts collected through the business operations of the Morro Bay Golf Course pro shop, restaurant, driving range, golf car rentals, lessons, and non-golf events. Contractor shall not reduce or increase the amount of gross receipts, as herein defined, as a result of any of the following:
- i. Any error in cash handling by Contractor; or
 - ii. Any losses resulting from bad checks received from the consumers or dishonored payment to Contractor by customer or purchaser.
- G.** Contractor agrees to increase paid rounds of golf and associated revenues to meet annual goals as established between County and Contractor. Additionally, Contractor shall increase the revenue derived from green fees and surcharges by a minimum of 2% annually. County will provide Contractor a 10% incentive payment for achieved revenue that exceeds the aforementioned goals (i.e. Green fee and surcharge revenue goal of \$1M and actual green fee and surcharge revenue of \$1.1M, then Contractor incentive pay would be \$10,000).
- H.** Contractor shall be responsible for paying all costs and expenses of Pro Shop and Food and Beverage operations and activities except those costs and expenses that this Contract expressly provides are to be borne by the County.

4. Rent. Contractor shall pay an annual rental payment to the County of \$75,000 (paid in twelve monthly installments of \$6,250 each) and an additional payment of five percent (5%) of Contractor’s monthly Contract Revenue. Contractor shall pay the annual rental payment to the County no later than the fifteenth day of the second calendar month after the Contract term begins and shall continue each and every month including the month following termination of the Contract. In the event

Contract is terminated for cause or breach of Contract, Contractor shall pay 5% of that months' Contractor Revenue and the remainder of the annual rental payment shall be made in full to County.

5. Term of Contract. This Contract shall commence on August 18, 2014, and shall terminate on August 31, 2024, unless terminated sooner as specified in this subparagraph. Termination or amendment of the Contract may be effectuated by the General Services Agency Director ("Director"). Without the need for action, approval or ratification of the Board of Supervisors, however subject to the provisions of paragraphs 7 and 8.

At the expiration or termination of this Contract, Contractor shall quit and surrender the said Premises including real property improvements, if any, in a good state of repair, damage by matters over which Contractor has no control excepted, provided that such exculpatory provisions shall not extend to any risk which Contractor is required to insure against as herein provided.

6. Use of Premises.

- A.** Contractor acknowledges golf course is a public recreation facility located within a public park, and agrees to operate said course open to the public without discrimination or exclusivity and on an equal basis open to all and to the extent allowable, keeping in mind the health, safety and welfare of the general public.
- B.** Contractor shall not use or permit the subject Premises to be used in whole or in part during the term of this Contract for any purpose other than as set forth without prior written consent of the Director. Contractor shall notify the Director, in advance, of all non-golf related events. Said events may be subject to a County issued Use Permit and associated impact fees.
- C.** Contractor agrees to operate the Morro Bay Golf Course as a part of County golf program consisting of two other golf courses. Contractor agrees to promote all three golf courses in a collaborative spirit and effort by cooperating with the County and other County golf course Contractors. These efforts shall include, but are not limited to cost sharing related to marketing and promotion, strategic planning, special event assistance, player development programs, tee sheet maximization, and player loyalty programs.
- D.** Contractor expressly agrees at all times during the term of this Contract, at his own cost and expense to maintain and operate such Premises and areas adjacent, in a clean, safe, wholesome and sanitary condition, free of trash, garbage or obstruction of any kind, and in compliance with any and all present and future laws, rules, or regulations of any governmental authority, now or at any time during the term of this Contract in force, relating to sanitation or public health, safety or welfare; and Contractor shall at all times faithfully obey and comply with all laws, rules and regulations of Federal, State, County

or other governmental bodies or department of officers thereof, and this Contract is expressly subject to the provisions and requirements of any existing or future agreements between the County and the United States of America or the State of California relative to the development, operation or maintenance of the golf course and food and beverage facilities. Contractor shall remedy without delay any defective, dangerous or unsanitary conditions. Contractor also agrees to abide by and perform to the facility maintenance schedule provided as "Exhibit C"

- E.** Contractor shall provide trained professional staff for effective and efficient operation of Contract related activities and the Contractual obligations of the Contract. Staff must support, through words and actions, the decisions made jointly and individually by County of San Luis Obispo.
- F.** Contractor must employ, at a minimum, one Class A Member in good standing with the Professional Golf Association or the Ladies Professional Golf Association.
- G.** Pro shop must be staffed with a minimum of two employees at all times.
- H.** Contractor is encouraged to have staff members maintain current certification in Adult Cardiopulmonary Resuscitation ("CPR"), Automated External Defibrillator (AED), and First Aid.
- I.** Contractor shall provide a well-stocked pro shop offering a selection of golf clothing, golf supplies for sale and/or rental, and golf equipment repairs. Pro shop inventory levels must maintain a minimum value of \$38,000. Minimum value to be determined by Contractor's costs of goods sold. Merchandise inventory shall turn over three (3) times per year at a minimum.
- J.** All goods sold or services rendered or performed under this Concession and offered for sale shall be subject to the approval of the Director or designee, who may direct that any such items be or not be offered for sale. With the written approval of the Director, prices for pro shop merchandise shall be set by Contractor, provided that such prices are within the range of prices in the community for the same or similar operations at similar concession establishments and/or consistent with the cost of providing services to the public.
- K.** Contractor shall be solely responsible for providing and maintaining, renting, staging, and daily detailing of golf car fleet, consisting of a minimum of 74 electric cars. 95% of the fleet must be fully operational and able to provide a minimum of 18 holes of service per day at all times. Individual cars within the fleet shall not exceed four (4) years in age at any time during the Contract. Contractor will be responsible for the preventive

maintenance and repairs of the golf car fleet in accordance with Golf Car Manufacturers Electric Golf Car Maintenance Schedule. Contractor shall not rent golf cars on such days as the Director, or designee, determines that the use of such cars will damage the golf course turf.

- L.** Contractor shall operate the golf course driving range and practice areas. This operation includes the provision, management, maintenance, and replacement of driving range practice balls. Driving range practice balls shall be replaced at a minimum of once per year or more often as directed by the Director or designee. The Contractor shall provide, maintain, and replace as necessary, driving range equipment which includes range ball baskets (all sizes), range ball picker, driving range mats, range dividers, bag stands, club cleaners, yardage signs, target green flags, and utility vehicle for driving range. County shall provide daily and weekly routine maintenance of the driving, driving range tee, and practice areas.
- M.** Contractor shall provide a minimum of 200 group or individual professional golf lessons annually. Contractor shall organize, implement, and supervise player development programs consisting of junior, adult, and “new golfer” lessons. Contractor agrees to support and provide access to “The First Tee” programming at Morro Bay Golf Course.
- N.** Contractor shall be solely responsible for complete janitorial services and furnishing of all janitorial supplies in the concession related clubhouse Premises, including dining rooms, restaurant, kitchen and storage, outdoor deck, restrooms, cart storage, cart staging areas, and Starter Shack. Contractor shall daily inspect parking lot and area surrounding pro shop to monitor cleanliness and trash removal.
- O.** Contractor shall be solely responsible for establishment and payment of alarm system for the building in its entirety. The Contractor shall provide and pay for telephone services to the pro shop Premises and restaurant and bar, including the starter’s desk, all credit card machines, fax lines, and pro shop offices, as well as electric services for the golf cart storage area.
- P.** Contractor and County shall jointly pay credit card transaction fees for the Point of Sale of the pro shop. Contractor shall be responsible for paying County twelve hundred fifty dollars (\$1,250) as reimbursement for credit card fees associated with pro shop sales that are associated with Contractor revenue. Contractor shall be solely responsible for all credit card fees for the restaurant and food and beverage activity. Contractor shall submit payment for credit card fees on the 15th day of each month.

- Q.** Contractor agrees to maintain any and all Premises, as outlined in Exhibit B, including specialized services necessary for the maintenance, repair, and servicing of the restaurant equipment such as range hoods, grease traps, and fire extinguishers, in good order and repair, at his own cost and expense, during the entire term of this Contract.
- R.** Contractor shall maintain, repair, and replace County provided computerized reservation system utilizing County provided program software. Ownership of this equipment shall remain with the County and upgrades to software are the County's responsibility. During the term of the Contract, Contractor shall be responsible for booking reservations and collecting customer database information. At the termination of the Contract, Contractor agrees to surrender all current and future reservations, associated deposits, and all database information as this data is and remains property of the County.
- S.** Database information collection shall remain at 90% correctness or higher. Contractor agrees to increase unique database information by 2% annually and to audit database information monthly to eliminate duplicate information. Database information may never be sold or used for any other purposes other than directly promoting the County golf program.
- T.** County staff will perform quarterly (or more frequently as needed) inspections of facilities to ensure Contractor's compliance with the contract terms, which may or may not involve Point of Sale (POS) auditing procedures. Contractor agrees to perform repairs and maintenance to the facility as required and specified by the County as a result of facility inspections. Evaluations of performance that rank below satisfactory levels will be re-evaluated within 30 calendar days. If performance has not improved to satisfactory levels the Contractor will have 30 calendar days to correct the deficiency. The Contract may be terminated for cause after three consecutive evaluations below satisfactory.
- U.** Contractor shall be solely responsible for the first Fifteen Hundred Dollars (\$1,500) in "each instance" of maintenance and repair costs including electrical, plumbing, heating and air conditioning systems, sound systems, walls, doors, exterior building maintenance, roof, and shall not at any time, commit or suffer any waste, neglect, nuisance, or unlawful act thereon. County shall be responsible for any amount in excess of Fifteen Hundred Dollars (\$1,500.00) in "each instance" of the maintenance and repair costs items listed above. All other repairs and maintenance are the responsibility of the Contractor, and shall be done by a licensed Contractor, where required by law. . Contractor shall submit all maintenance or repair quotes to the Director or designee, for review and written approval prior to any repair or maintenance work being performed.

Should Contractor fail or neglect to make maintenance or repairs in a timely manner, and such delay results in maintenance or repair cost greater than Fifteen Hundred Dollars (\$1,500) in "each instance," Contractor shall be responsible for the full cost of the maintenance or repair.

Contractor may employ, pay and supervise maintenance personnel to perform required services. Maintenance personnel shall be responsible to Contractor and cooperate with County personnel. Contractor shall employ personnel of good moral character and who are physically able to handle their duties and must be promptly replaced when failing in their duties.

Contractor shall, at all times and at his own expense do all things reasonably necessary to protect the facilities used by Contractor. The County also reserves the right to do any and all work of any nature necessary for the preservation, maintenance and operation of the Premises in any areas within the confines of said Premises. Contractor shall be given notice when such work may become necessary and will adjust Premises operations in such a manner that the County may proceed expeditiously.

- V.** The Contractor shall not grant, with respect to said Premises, easements, rights-of-way, licenses, or permits.
- W.** All facility modifications, alterations, or improvements exceeding \$5,000 shall require both County and State Parks prior written approval. Improvement plans shall be submitted to the Director or designee for approval at least sixty- (60) days in advance of the initiation of any such projects. Contractor shall retain ownership of approved capital improvements during term of Contract. At the expiration or earlier termination of this Contract, all facility alterations, modifications, or improvements shall, absent any written agreement between the County and Contractor, or unless County otherwise elects, become the property of County free and clear of any claims or liens, and without any compensation to Contractor.
- X.** All marketing efforts are for the benefit of County and shall be conducted in County's best interest. County has ultimate, sole discretion over all marketing matters. Contractor and County agree that marketing, advertising, and promotions are key and critical components to the economic success of Morro Bay Golf Course. Contractor shall provide an annual marketing plan with a budget financed by Contractor that is equal to or greater than three percent (3%) of the previous calendar years' gross Contractor revenue. All marketing material shall be submitted and approved by County prior to utilization. The marketing plan to be implemented on January 1 shall be submitted by

the fifteenth of October of the previous year. (Jan. 1, 2015 marketing plan submitted no later than Oct. 15, 2014) Contractor shall submit quarterly marketing reports to County on the 15th of January, April, July, and October of each year. Reports shall contain all marketing efforts from the previous quarter, the expenses and results of stated efforts, and plans for future quarter(s) complete with costs, goals, and expected outcome.

- Y.** Contractor shall provide pro shop and driving range services to the golfing public seven (7) days per week starting no later than 6:00 a.m. and continuing until golfers have left the Premises. The driving range shall close early one day per week to allow for a complete picking of range balls prior to turf maintenance the following day. Restaurant services must be available to the golfing public beginning at 6 a.m. seven (7) days a week and the bar must remain open until at least one (1) hour prior to sunset, while the grill may close three (3) hours prior to sunset. Contractor shall post the hours of operation in a location visible to the public, and must be open for business during the hours posted. Hours of operation may not be changed without the prior written approval of the Director or designee.
- Z.** Contractor shall offer food and beverage service, including alcoholic beverages, to the golfing and general public from the Premises. Contractor recognizes that outside functions must not adversely impact the facility use by the golfing public. Contractor must obtain a full service liquor license valid for San Luis Obispo County within 6-months of award of concession Contract. This full service license must be maintained and in effect throughout the entire Contract period.
- AA.** Contractor shall be responsible for all activity on the golf course including the enforcement of such rules and regulations as the County may adopt relating to the conduct of patrons on the golf course.
- BB.** Contractor shall be solely responsible for all aspects (including recruitment and supervision) of Marshal and Starter program and of all activity on the golf course relating to individuals on the golf course property. At a minimum, marshals and starters shall address safety, customer service, course etiquette, and verification of paid fees. County shall approve all new marshals and starters prior to the commencement of their volunteer services.
- CC.** Contractor shall install at Contractor's expense, a satellite dish or cable television and big screen, or multiple televisions, for patron viewing, in the snack bar area. These improvements shall remain the personal property of the Contractor and may be removed upon termination of the Contract. Upon removal of the improvements, the Premises

shall be restored to its original condition. Contractor shall be solely responsible for payment of all associated satellite or cable services.

- DD.** Contractor agrees to administer County provided customer satisfaction surveys and provide County with the results. Contractor shall conduct a customer satisfaction survey no fewer than 2 times per year. Customer satisfaction levels must be maintained at a minimum of 82%. If three consecutive surveys result in a customer satisfaction below this minimum level, the County may terminate this Contract for cause.
- EE.** Contractor agrees to uphold and follow all County Policies and Procedures pertaining to the operation of County Parks and Golf Courses. County policy is subject to revision at County discretion.
- FF.** Contractor shall not have the right to operate and/or promote any other type of business, other than golf related business, from the Morro Bay Golf Course without prior written consent from the Director or designee. Contractor may not operate any other non-County golf related businesses within the County of San Luis Obispo and shall agree to conduct any and all golf related business in such a way so as not to create a conflict of interest with other County of San Luis Obispo owned and/or operated golf course(s).

7. Termination of Contract for Convenience of Either Party. Either party may terminate this Contract at any time by giving to the other party 12-months advance written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Notwithstanding the foregoing, if the Operating Agreement between the County and the State terminates prior to the term of this Contract, then this Contract shall also terminate, upon thirty (30) days prior written notice to Contractor.

8. Termination of Contract for Cause. If Contractor fails to perform Contractor's duties to the satisfaction of the County or if Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract or if Contractor shall violate any of the terms or provisions of this Contract or if Contractor, Contractor's agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the County, then County shall have the right to terminate this Contract effective within 30 days upon the County giving written notice thereof to the Contractor. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination.

9. Breach. This Contract is granted by County upon the express condition that in the event the Director or designee deems objectionable or improper any conduct on the part of the Contractor, its

employees or agents, which shall not have been remedied or corrected within a period of thirty (30) days after written notice thereof by County to Contractor; or if default or breach of Contract be made by Contractor in any of the covenants herein contained and Contractor shall continue in such default or breach; or should any attachment, garnishment or execution be levied against the Contractor or County's property and not be removed within ten days after written notice from County; or if Contractor shall cease its operations under this Contract for causes other than destruction of the Premises, either with or without legal process, on giving 10-days' notice of intention to do so, and upon expiration of said notice, County, or its officers, agents or employees, shall be entitled to the immediate possession of the Contract Premises and this Contract shall terminate effective immediately and Contractor shall have thirty (30) days to remove personal property.

The exercise of the remedies provided for in this section shall be cumulative and in no way affect or replace other remedies available to County.

10. Equal Employment Opportunity. During the performance of this Contract, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, and hereby promises to comply with the provision on Contractor agreements contained in Presidential Executive Order Number 11246 as amended by Executive Order (1) 75 and as approved by Department of Labor Relations (41 CFR Part 61).

11. Entire Agreement and Modification. This Contract supersedes all previous Contracts and constitutes the entire understanding of the parties hereto. Contractor shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Contractor specifically acknowledges that in entering into and executing this Contract, Contractor relies solely upon the provisions contained in this Contract and no others.

12. Non-Assignment of Contract. Inasmuch as this Contract is intended to secure the specialized services of the Contractor, Contractor may not assign, transfer, delegate or sublet any interest therein without the prior written consent of County and any such assignment, transfer, delegation, or sublease without the County's prior written consent shall be considered null and void.

13. Covenant. This Contract has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Contract shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Contract.

14. Enforceability. If any term, covenant, condition or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

15. Employment Status. Contractor shall, during the entire term of the Contract, be construed to be an independent Contractor and nothing in this Contract is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow County to exercise discretion or control over the professional manner in which Contractor performs the services which are the subject matter of this Contract; provided always however that the services to be provided by Contractor shall be provided in a manner consistent with all applicable standards and regulations governing such services.

Contractor understands and agrees that Contractor's personnel are not and will not be eligible for membership in or any benefits from any County group plan for hospital, surgical or medical insurance or for membership in any County retirement program or for paid vacation, paid sick leave, or other leave, with or without pay or for any other benefit which accrues to a County employee.

16. Warranty of Contractor. Contractor warrants that he is certified and licensed under the laws and regulations to provide the services under this Contract. Contractor further agrees that it shall keep in full force and effect, during the entire term of this Contract, all permits, registrations, and licenses, if required by law or by this Contract, to accomplish the work specified herein. If Contractor is a corporation or limited liability company, Contractor represents and warrants that it is and will remain, throughout the term of this Contract, either a duly organized, validity existing California corporation or limited liability company in good standing under the laws of the State of California (including, without limitation, in active and good standing with the Secretary of State and Franchise Tax Board), or a duly organized, validly existing foreign corporation or limited liability company in good standing in the state of incorporation or organization and have an agent for service of process within California.

17. Closure. At any time, should an occurrence such as war, armed conflict, public emergency, public nuisance, calamity, fire, earthquake, flood, act of God, strike, or similar act or other event which necessitates the closing of the Morro Bay State Park Golf Course, or a portion thereof, to the general public, and prevent performance of this Contract in accordance with the rights and privileges granted herein, Contractor shall have no recourse by law or equity to County for losses incurred.

18. Quality of Service and Control of Rates and Pricing. A competent employee of Contractor shall be on the Premises at all times while the Premises are open and in operation.

Contractor agrees that he shall and will furnish and maintain a first class standard of service. For the purposes of this Contract, "First Class" shall have the following meaning:

"Possessing a welcoming and friendly demeanor and a high affinity for detail as it pertains to organization, customer service, cleanliness, and the observance of rules, policies, and laws."

The County shall have access to, and the right to inspect the schedule of prices and rates for goods sold or services rendered or performed upon the subject Premises, which are not set by the Board of Supervisors. If the County determines that any price or prices are unreasonable or inappropriate for the services rendered, or the item sold, the same shall be modified as directed by the Director or designee; provided that Contractor prior to such modification shall be given a reasonable opportunity to confer with the Director and justify such prices. The Director or designee reserves the right to prohibit the sale of any item that is deemed objectionable or beyond the scope of merchandise deemed necessary for proper service to the public.

19. Indemnification. To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the COUNTY, and California Department of Parks and Recreation, its officers, agents, and employees from all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement to the extent caused by the negligent performance or attempted performance of the provisions hereof, including any willful or negligent act or omission to act on the part of the CONTRACTOR or his agents or employees or independent Contractors. This indemnity will not extend to any claims or losses arising out of the negligence or willful misconduct of the County.

20. Insurance. Contractor shall obtain and maintain for the entire term of the Contract and Contractor shall not perform any work under this Contract until after he has obtained insurance complying with the provisions of this paragraph, delivered a certified copy of each insurance policy to the County, and obtained County approval of all such policies. Companies authorized to do business in the State of California shall issue said policies. Contractor shall maintain said insurance in force at all times. The following coverage with the following features shall be provided:

Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

A. Commercial General Liability Contractor shall maintain in full force and effect for the period

covered by this Contract, commercial liability insurance. This insurance shall include, but shall not be limited to, comprehensive general and automobile liability insurance providing protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from any act or occurrence arising out of Contractor's operations in the performance of this Contract, including, without limitation, acts involving vehicles. The policy shall provide not less than single limit coverage applying to bodily and personal injury, including death resulting there from, and property damage in the total amount of One Million Dollars (\$1,000,000). The following endorsements must be attached to the policy:

1. If the insurance policy covers on an "accident" basis, it must be changed to "occurrence".
2. The policy must cover personal injury as well as bodily injury.
3. Blanket Contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.

B. Automobile Liability ISO Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

C. Workers' Compensation In accordance with the provisions of sections 3700 et seq., of the California Labor Code, if Contractor has any employees, Contractor is required to be insured against liability for workers' compensation or to undertake self-insurance. Contractor agrees to comply with such provisions before commencing the performance of this Contract

OTHER INSURANCE Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The commercial general liability policies shall name the "County of San Luis Obispo, and California Department of Parks and Recreation, its officers, employees, and agents" as additional insured. The policy shall provide that the Contractor's insurance will operate as primary insurance and that no other insurance maintained by the County or additional insured will be called upon to contribute to a loss hereunder.

Primary Coverage

For any claims related to this Contract, the **Contractor's insurance coverage shall be primary** insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or

self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to the County.

Failure to Maintain Insurance

Contractor's failure to maintain or to provide acceptable evidence that it maintains the required insurance shall constitute a material breach of the Contract, upon which the County immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract. The County, at its sole discretion, may obtain damages from Contractor resulting from said breach.

Waiver of Subrogation

Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the County.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of Contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the Contract of work**
3. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the Contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of Contract work.

Separation of Insured's

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insured's provision with no insured versus insured exclusions or limitations.

Verification of Coverage

Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Certificates and copies of any required endorsements shall be sent to:

San Luis Obispo County
General Services Agency
Real Property Services
1087 Santa Rosa
San Luis Obispo, CA 93408
Attention: Real Property Services Manager

Subcontractors/Non-Golf Events

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Special Risks or Circumstances

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

21. Records. Contractor shall keep complete and accurate records for the services performed pursuant to this Contract and any records required by law or government regulation and shall make such records available to County upon request. Contractor shall assure the confidentiality of any records that are required by law to be so maintained. Contractor shall prepare and forward such additional or supplementary records as County may reasonably request.

22. Accounting. Contractor shall adhere to the accounting requirements, financial reporting, and internal control standards as described in the Auditor-Controller Contract Accounting and Administration Handbook, (Handbook) which contains the minimum required procedures and controls

that must employed by Contractor's accounting and financial reporting system, and which is incorporated herein by reference. Contractor shall require subcontractors to adhere to the Handbook for any services funded through this Contract, unless otherwise agreed upon in writing by County. The Handbook is available at <http://www.slocounty.ca.gov/AC/>, under Policies and Procedures or at the Auditor-Controller's Office, 1055 Monterey Street Room D220, County Government Center, and San Luis Obispo, California, 93408. The Office of Management and Budget (OMB) circulars are available at <http://www.whitehouse.gov/omb/circulars>.

Contractor shall make accounting records and supporting documentation available on demand to the County for inspection and audit. Disallowed costs shall be repaid to the County. The County may require having the Contractor's accounting records audited, at Contractor's expense, by an accountant licensed by the State of California. The audit shall be presented to the County Auditor-Controller within thirty (30) days after completion of the audit.

23. Audit Rights. Pursuant to Government Code section 8546.7, every Contract involving the expenditure of public funds in excess of \$10,000 is subject to examination and audit of the State auditor, at the request of the public entity or as part of any audit of the public entity, for a period of three years after final payment under the Contract. Contractor shall permit the State Auditor to have access to any pertinent books, documents, papers and records for the purpose of said audit. County shall advise Contractor if it becomes aware of such audit at least fourteen (14) days prior to the commencement of the audit. All payments made under this Contract shall be subject to an audit at County's option, and shall be adjusted in accordance with said audit. The Contractor shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in any County audits. This provision is in addition to any other inspection and access rights set forth in this Contract.

24. Copyright. Any reports, maps, documents or other materials such as internet domain names, websites, social media names and accounts, social networking platforms sites produced in whole or part under this Contract shall be the property of the County and none shall be subject to an application for copyright by or on behalf of Contractor.

25. Time is of the Essence. Time is of the essence in the delivery of the goods and services by Contractor under this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the good not conforming to applicable specifications, drawings, samples, or descriptions, or services that do not conform to the prescribed scope of work. Acceptance of any part of the order for goods shall not bind County to accept future goods and services. The acceptance by County of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach and shall not constitute a waiver of the rights or requirements for the

complete and timely performance of any obligation remaining to be performed by the Contractor, or of any other claim, right or remedy of the County

26. Contractor's Responsibility for Compliance. Contractor shall at all times observe and comply with, and shall cause all his agents, employees and sub-Contractors to observe and comply with all present and future laws, statutes, ordinances, regulations, rules, resolutions, or other binding enactments of any governmental authority, now or at any time during this Contract and any extensions thereof. If any future laws, rules, regulations or ordinances are passed by the County and said legislative enactment has any impact fiscal or otherwise on Contractor, and if Contractor does not make a timely objection to County during the course of legislative process, Contractor will be deemed to have waived any right to object at a later time and waives all damages flowing there from.

27. Notices. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by first class mail to the County at:

County of San Luis Obispo
General Services Agency
1087 Santa Rosa
San Luis Obispo, CA 93408
Attn: Golf Superintendent

and to the Contractor at:

Golden State Golf Company
Attn: Joel Clay
10,000 El Bordo Road
Atascadero, CA 93422

28. Signs and Approval of Name. No signs, names or placards shall be inscribed, painted or affixed upon said Premises without notification and/or written consent of Director or designee.

29. Contractor Right to Contract for Third Party Services. County shall permit Contractor to Contract for specialized services, subject to the following conditions:

A. The Director or designee shall approve any specialized service needed.

- B. Any specialized service Contractor shall be fully licensed and insured, a reputable Contractor in his field, and shall name the County as additional insured on his insurance policy, of which said policy shall be in conformance with County insurance requirements.
- C. Service shall be provided to Contractor at no cost or expense to the County. The Director shall have sole and final right to decide any Contracted issues.
- D. Any Contract for specialized services shall contain the County's indemnification clause in favor of the County. Consideration for said clause shall be the right to enter County Premises to perform specialized services.

30. Performance Bond. At the time of execution of the Contract, the Contractor shall furnish a faithful performance bond surety in the sum of \$50,000 (or a cashier's check, or a bank letter of credit, or certificate of deposit in name of County with interest payable to Contractor, in lieu thereof) to be in force during term of this Contract.

31. Facility Maintenance Bond. Contractor shall furnish a faithful maintenance bond surety in the sum of \$4,500 (or a cashier's check, or bank letter of credit, or certificate of deposit in the name of County with interest payable to Contractor, in lieu thereof) to be in force during term of this Contract. If County is required to utilize this bond, the Contractor shall replenish the bond to full amount within 30 days.

32. Duration of Public Facilities. By entering into this Contract, the County makes no stipulation as to the type, size, location and duration of public facilities to be maintained at the golf course.

33. Eminent Domain. If the whole of the Premises shall be taken or condemned by any competent authority under power of eminent domain for a public or a quasipublic use or purpose, then the services Contract hereby created shall cease and terminate as of the date actual physical possession of the Premises is taken by the condemnor. All compensation and damages awarded for such total taking shall belong to and be the sole property of County, provided, however, that Contractor shall be entitled to receive any award for the taking of or damage to Contractor's equipment, fixtures, or any improvements made by Contractor to the Premises which the Contractor would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Contract.

In the event that there shall be partial taking of the Premises during the Contract term under the power of eminent domain, this Contract shall terminate as to the portion of the Premises so taken on the date when actual physical possession of said portion is taken by the condemnor, but this Contract shall at County's option, continue in full force and effect. The compensation and damages for such partial taking shall belong to and be sole property of County, provided, however, that Contractor shall be entitled to receive any award made by Contractor to the Premises which Contractor would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Contract, and, in the event that this Contract is continued as to the portion of the Premises not condemned, any award made for

alterations, modifications or repairs which may be reasonably required in order to place the remaining portion of the Premises not taken in a suitable condition shall belong to County.

34. Sexual and Gender Harassment Warranty and Liability. Contractor and all Contractor's employees have a Contractual obligation to become fully trained and knowledgeable regarding behavior prohibited by law as sexual and/or gender harassment and at all times to comply with and ensure that all persons performing this Contract comply with an appropriate standard of conduct. Discrimination against any person because of the marital status or ancestry of that person or any characteristic listed or defined in Section 11135 of the Government Code is expressly prohibited. Contractor or any of Contractor's employees who violate sexual and/or gender harassment laws shall be liable to the County for all claims, demands, damages, costs, expenses, and attorney's fees incurred by the County as a result of behavior of Contractor or any of Contractor's employees performing this Contract.

35. Americans With Disabilities Act. County shall be responsible for alterations necessary to comply with the Americans With Disabilities Act of 1990, 42 U.S.C. sect. 12101 et seq., as currently enacted and in accordance with applicable laws.

36. Drug Free Workplace. Contractor and Contractor's employees shall comply with County's policy of a drug free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess, or use controlled substances, including but not limited to marijuana, heroin, cocaine, methamphetamine, or amphetamines at any of Contractor's facilities or County facilities or worksites. If any employee of Contractor is found to be under the influence of or in possession of any illegal substance at or on County's Premises, that employee may not return to any of County's Premises. Further return shall be a breach of this Contract. If Contractor becomes aware that any of Contractor's employees, during the course of their employ with Contractor, are convicted or plead nolo contendere to a criminal substance abuse statute, Contractor shall be responsible for notifying the Director within seventy-two (72) hours of becoming aware of said conviction or plea. Violation of this notification provision shall constitute grounds for termination of this Contract.

37. Smoking. Entire indoor portion of the building shall be a non-smoking building and therefore, no smoking shall be allowed in the indoor portion of the Premises. Smoking on the patio portion of the Premises is permitted.

38. Hazardous Waste. Contractor and County shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, UREA formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials" or "TOXIC SUBSTANCES" under such laws, ordinance or regulations (collectively, "Hazardous Materials").

Contractor shall, except in the event of County's sole negligence, indemnify, defend, protect, and hold County, each of County's officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by: (a) The presence in, on, under or about the Premises or discharge in or from the Premises of any Hazardous Materials or Contractor's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials, to, in, on, under, about or from the Premises, or (b) Contractor's or County's failure to comply with any Hazardous Materials Law. Contractor's or County's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith caused by Contractor and County and shall survive the expiration or earlier termination of the term of the Contract. For purposes of the release and indemnity provisions hereof, any acts or omissions of County, or by employees, agents, assignees, Contractors or Subcontractors of County or others acting for or on behalf of County (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to County.

39. Taxes. During the term of this Contract, Contractor hereby agrees to pay, prior to delinquency, all taxes and assessments, including both general and special, levied or assessed against the Premises and in connection with the Premises and Contractor's operation thereof, including without limitation, taxes on Contractor's possessory interest hereunder or in the Premises, and taxes or assessments on all structures, improvements, and fixtures now or hereinafter existing on the Premises, and on any personal property situated in, on, or about the Premises, or in, on or about any structures or improvements thereon. Contractor is hereby informed that a possessory interest subject to property taxation shall be created by this agreement and that the party to whom the possessory interest is vested (Contractor) shall be subject to the payment of property taxes levied on such interest and must pay such taxes prior to delinquency.

IN WITNESS THEREOF, County and Contractor have executed this Contract on the day and year first hereinabove set forth.

APPROVED AS TO FORM AND LEGAL
EFFECT:

Rita Neal
County Counsel

By: _____
Deputy County Counsel

Date: _____

CONTRACTOR:

Title: _____

Date: _____

COUNTY OF SAN LUIS OBISPO

By: _____
Chairman of the Board of Supervisors

Approved by the Board of Supervisors this on

_____, 20__

ATTEST:

Clerk of the Board of Supervisors